

BEFORE THE
UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express & Priority Mail
Priority Mail Express & Priority Mail Contract 35

Docket No. MC2016-205

Competitive Product Prices
Priority Mail Express & Priority Mail Contract 35 (MC2016-205)
Negotiated Service Agreement

Docket No. CP2016-294

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
PRIORITY MAIL EXPRESS & PRIORITY MAIL CONTRACT 35 TO THE
COMPETITIVE PRODUCT LIST

(September 30, 2016)

The Public Representative hereby provides comments pursuant to an initiating notice.¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service request to add Priority Mail Express & Priority Mail Contract 35 to the competitive product list.² The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed a contract (under seal) related to the proposed new product, and supporting financial data.

According to the Postal Service, Priority Mail Express & Priority Mail Contract 35 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. §

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 26, 2016. (Notice)

² Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 35 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, September 23, 2016 (Request).

3632(b)(3). *Request* at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are justified by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Priority Mail Express & Priority Mail to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Attachment D* at 1.

The contract's effective date will be set two (2) business day following the date on which the Commission issues all necessary regulatory approval. *Attachment B* at 3. The contract is to expire three (3) years from the effective date, unless 1) terminated by either Party within 30 days' notice with applicable restrictions, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent Agreement between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation.⁴ *Id.* at 3.

DISCUSSION

Requirements of 39 U.S.C. § 3652. Pursuant to 39 U.S.C. § 3652(b)(1), the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

⁴ At the conclusion of this Contract term both Parties agree if preparation of a successor contract is active, the Contract will be extended for up to two (2) ninety (90) day periods with official notification to the Commission within at least seven (7) days of the Contract expiring. (*Attachment B* at 3)

attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Express & Priority Mail Contract 35 should be categorized as a competitive product and added to the competitive product list.

The contract is expected to remain in effect for a period of three years but the Postal Service did not provide data to demonstrate the contract's compliance with the requirements of 39 U.S.C. § 3633(a) during the second and third years. This concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.⁵ The Commission also has an opportunity to conduct an annual compliance review of this product in its Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁵ See Appendix B of Request of the United States Postal Service to Add Priority Mail Express & Priority Mail Contract 35 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data. September 23, 2016. Page 3.